
(2010) 04 DEL CK 0046
In the Delhi High Court
Case No : WP (C) No. 2781 of 1997

Mrs. S.S. Manohara

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Delhi School Education Rules, 1973 — Rule 75, 96

Citation : (2010) 04 DEL CK 0046

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : V.K. Rao and Karan Maini, for the Appellant; Avnish Ahlawat and Latika Choudhury for R-1 and Anil Srivastav, for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

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Rajiv Sahai Endlaw, J.—The petitioner by this writ petition seeks direction to the respondents to pay to the petitioner the pay scale and other allowances and benefits as of a TGT and a further direction of sanctioning of a post of TGT for the purposes of grant- in-aid and on such sanction being received, direction for appointment of the petitioner as a TGT.

2. The petitioner filed the petition stating that the respondents No. 2 being the Andhra Education Society running a chain of schools recognized and fully aided by respondent No. 1 Director of Education had appointed the petitioner as a TGT in one of the said schools at Janakpuri (impleaded as respondent No. 3) in the year 1986, initially temporarily on a consolidated pay and after proper selection by duly constituted Selection Committee, vide appointment letter dated 1st September, 1992 in the pay scale of Rs. 1400-2300. It was the case of the petitioner that though the petitioner, at the time of filing of this petition in the year 1997 had been teaching in the said school for more than ten years and had teaching experience in other schools also, but was being treated as "Society

Staff" because the respondent No. 1 Director of Education had not sanctioned the post of a TGT for grant-in-aid purposes. It is the averment of the petitioner that though there is a continuous and perennial need for a TGT as evident from the petitioner having taught in the said school for over ten years but no such post was being sanctioned for the purposes of grant- in-aid. It is further the case of the petitioner that the other TGTs in the school who were performing the same duties as the petitioner but whose salaries were received by way of aid from the Director of Education were in the pay scale of Rs. 1400-2600. The petitioner thus on the principle of "equal pay for equal work" sought the writ/direction aforesaid for payment in the scale of Rs. 1400-2600.

3. The senior Counsel for the petitioner informs that the petitioner has since superannuated in or about the year 2000. It is contended that the petitioner is thus not claiming the relief of regularization but is claiming the relief of grant of the pay scale of a regular TGT for her entire career in the said school from 1986 till superannuation in the year 2000 or at least from 1992 when she was confirmed and till the age of superannuation in 2000.

4. It was inquired from the senior Counsel for the petitioner as to whether for the appointment of the petitioner the procedure as prescribed in Rules 96-106 of the Delhi School Education Rules, 1973 had been followed. The answer is in the negative. Attention of the senior Counsel for the petitioner was then drawn to the judgment dated 26th April, 2007 of the Division bench of this Court in LPA 1620/2006 titled NCT of Delhi v. Anubha Pant. Ms. Anubha Pant had filed the writ petition seeking a direction for granting her regular pay scale of Assistant Teacher and for regularisation of her services in a private unaided recognized school, the management whereof had been taken over by the Director of Education. The Single Judge of this Court allowed the writ petition and directed the Director of Education to take a final decision as per Rules 96 & 98 for the appointment of Anubha Pant. Aggrieved from the said order of the Single Judge, the LPA was preferred. The Division Bench found that Anubha Pant was overage at the time of her initial appointment and no advertisement inviting application had been issued prior to her appointment and no selection committee constituted for her selection. The Division Bench thus held that backdoor appointment cannot be regularized and given legal sanction. The appeal was accordingly allowed.

5. In the present case also the petitioner, at the time of her initial appointment was overage. No advertisement inviting applications for appointment was issued and no Selection Committee under the Delhi School Education Rules was constituted. The present case would thus be fully covered by the judgment of the Division Bench aforesaid.

6. The senior Counsel for the petitioner then contended that even if the petitioner is not entitled to the relief against the Director of Education, she would still be entitled to the relief against the respondent No. 2 Society which is running the school, for payment for equal pay for equal work as the TGTs employed by the school. Attention is also invited to the pleadings in the petition

regarding the petitioner performing the same work and teaching the same classes as the TGTs who were receiving a higher scale. Reliance is also placed on *Nehru Yuva Kendra Sangathan Vs. Rajesh Mohan Shukla and Others*, where the Supreme Court finding that the nature of duties being discharged by the Youth Coordinators on deputation and those who had been directly recruited being the same and the only difference being their source of recruitment, directed payment of the same emoluments to the deputationists as to the direct recruits. Reliance is further placed on *Rakhi Sharma Vs. Lt. Governor*, where a Single Judge of this Court applying principle of "equal pay for equal work" directed payment of arrears of difference in the pay to a school teacher appointed by the Parent Teacher Association and found to be performing the same job as a teacher appointed by the school.

7. I may notice that in *Nehru Yuva Kendra (supra)* the rules permitted deputationists as well as direct recruitment. Thus, it was not that the appointment of one stream was within the Rules and of the other in breach of the Rules. It was in that factual background that the Supreme Court held that the source of recruitment was immaterial. However, in the present case, though the petitioner claims to be performing the same work as the teachers appointed under the Delhi School Education Rules, the fact remains that the appointment of the petitioner is admittedly not as per the said rules. It was therefore put to the senior Counsel as to how the principle of "equal pay for equal work" could be applied to the present case where the teachers with whom the petitioner is claiming parity are not at par with the petitioner. The senior Counsel contends that the parity has to be in the performance of duties and not in appointment. However, the said principle if applied would run contrary to the judgment of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, and would tantamount to permitting first the appointment through means other than those prescribed in the Rules and then bringing such appointees at par with those appointed in terms of the Rules. The same cannot be permitted.

8. The counsel for the respondent No. 1 Director of Education contends that the appointment of the petitioner is not against any vacancy to the post of a TGT in the school. Attention is invited to Rule 75 whereunder the Director of Education sanctions the post and approves the appointment in the school. It is contended that neither any approval was sought nor granted qua the petitioner and thus the petitioner cannot claim any relief whatsoever of grant in aid qua her salary from the Director of Education.

9. The counsel for the respondents 2 and 3 has besides controverting that the petitioner was performing the same duties as of TGTs in the school has at the outset itself drawn attention *State of Haryana and Others Vs. Charanjit Singh and Others*, etc. etc., where after a consideration of a catena of past judgments it has been held that the doctrine of "equal pay for equal work" is not an abstract doctrine but equal pay must be for equal work of equal value; the principle has

no mechanical application in every case of similar work; Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together as against those who are left out; the very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference; where persons are selected by a Selection Committee on the basis of merit with due regard to seniority, a higher pay scale granted to such persons who are evaluated by a competent authority cannot be challenged. It was further held that nomenclature cannot be determinative and the quality of work produced may be different and even the nature of work assigned may be different. It was further held that the application of principle of "equal pay for equal work" requires consideration of various dimensions of a given job and before any direction can be issued by a court, the court must first see that there are necessary averments and proof.

10. Having laid the aforesaid foundation, the counsel draws attention to the appointment letter of the petitioner where it is expressly mentioned that the petitioner is as an employee/staff of the society in the aforesaid pay scale as distinct from employee/staff of the school in the pay scale prescribed under the Delhi School Education Act. It is also urged that the pay scale of Rs. 1400-2300 is mentioned in the appointment letter itself and it has further been clarified that the society/staff shall have no claims to vacant post in the school receiving grant-in-aid. The counsel for the society explains that the school caters primarily to the children of natives of State of Andhra Pradesh settled in Delhi; the said children at times have difficulty in understanding the English medium of teaching and for that reason and otherwise need supplementing and for which purpose the society employs staff such as the petitioner. The counsel describes the petitioner as a "remedial teacher". It is also contended that the pleadings of the petitioner qua performing equal work as a TGT are vague and the documents filed do not prove the petitioner performing equal work as a TGT. It is argued that though the petitioner has stated that she is teaching higher classes (though appointed only for primary classes) but has not made a comparison of the work performed by the TGTs. The contention is that the petitioner has been performing the work of a TGT not regularly but only intermittently whenever so required; she has no responsibility for ensuring the result and is not required to have carried out the assignments as a TGT is required to carry out. From the documents filed by the petitioner it is demonstrated that the work of the petitioner as TGT is periodic and for a few days only in a year. The counsel thus contends that the petitioner is not entitled to relief against the society also even on the principle of "equal pay for equal work".

11. The senior Counsel for the petitioner in the rejoinder though not disputing the correctness of the principle laid down in Charanjit Singh (supra) has also referred to State of Punjab and Another Vs. Surjit Singh and Others, to again buttress that the source of recruitment is immaterial and it is only the work performed which is to be seen.

12. Applying the principle laid down in Charanjit Singh (supra) I am unable to hold the petitioner entitled to the relief. The petitioner has failed to prove that the duties performed by her are same as that of the teachers whose pay scale she claims. It is not the plea of the petitioner that as a TGT she was made a class teacher or a subject teacher or responsible for the result of the students taught by her or taught the said students regularly. Merely because in the absence of any teacher the petitioner was assigned to perform her task would not place the petitioner in the same position as the teachers whose pay scale she is claiming. Moreover allowing the claim of the petitioner as aforesaid would eliminate the compliance of the Rules (supra).

The petition therefore fails and is dismissed. However, no order as to costs.